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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 730 of 2006
Date of decision: 1.10.2007

Rakesh Kumar ...Petitioner

Versus

Raj Rani ...Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. C. L. Sharma, Advocate for the petitioner.

Mr. K. S. Cheema, Advocate for the respondent.

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RAJESH BINDAL, J.

The tenant is in revision before this Court against concurrent findings of fact by both the Courts below where his eviction has been ordered from the shop in dispute. The shop was rented out to him in 1976 at rent of Rs. 70/-, which was later on increased to Rs. 400/- per month. The eviction was sought by respondent/landlord on the ground of personal necessity.

2. Learned counsel for the petitioner/tenant submitted that in the statement made by the respondent/landlord, it was claimed that the premises in dispute is required for her husband to carry on the business and accordingly, shop in question is required to pursue occupation of the respondent/landlord and her husband. He submitted that during the pendency of the appeal before the Appellate Authority, against the order of eviction, the husband of the respondent/landlord had expired and as a result thereof no necessity subsists. Accordingly, keeping in view subsequent facts, which have material bearing on the decision of the present case, revision petition filed by the tenant deserves to be accepted and the ejectment petition filed by the respondent/landlord should be rejected. Learned counsel for the petitioner/tenant relied upon the judgments in **Jaswant Singh Vs. Krishan Kumar and another 1984 (1) Rent Law**

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Reporter 160 and **Hari Chand Vs. Bhagwan Dass and others 1991 (2) Punjab Law Reporter 280.**

3. On the other hand, learned counsel for the respondent/landlord submitted that even if the husband of the landlord had expired, she could not be made to suffer on account of delay undertaken in the judicial process. The eviction petition was filed way back in 1997. The husband of the respondent/landlord expired in February, 2002. He further submitted that if the husband of the respondent/landlord has expired, nothing prevented the respondent from carrying on the business as this was stated by her in her statement before the Court below. In reply, it was further stated that the crucial date for consideration of claim for eviction is the date of filing of eviction petition and further that business will be carried on by her. Learned counsel for the respondent/landlord relied upon the judgment of Hon'ble the Supreme Court in **Kamleshwar Prasad Vs. Pradumanju Agarwal (dead) by Lrs. 1997 (1) Rent Law Reporter 522.**

4. Having heard learned counsel for the parties, I find merit in the contention raised by learned counsel for the respondent/landlord. No doubt husband of respondent/landlord has expired. Still nothing preventing the respondent/landlord to carry on the business in the same premises. Mere her old age is no bar for her to carry on the business as she is also to make her both ends meet. The premises let out under certain circumstances to a tenant when the same was not needed by the landlord does not mean that in all eventualities she is not entitled to claim the eviction and even on account of delay in the judicial process because of large pendency of the cases, her claim should be rejected because of certain subsequent events taking place. In the present case, in my opinion, even the subsequent events are not so, which totally eclipse the need of the landlord. As against the judgments cited by learned counsel for the petitioner/tenant, which are Single Bench judgments of this Court taking a view that on the death of landlord, the personal necessity ceases to exist and legal representatives cannot take advantage thereof, cannot be relied upon in view of the judgment of Hon'ble the Supreme Court in **Kamlehswar Prasad's case** (supra), where Hon'ble the Supreme opined as under:-

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> "Under the Act the order of the appellate authority is final and the said order is a decree of the civil court and decree of a competent Court having become final cannot be interfered with by the High Court in exercise of its power of superintendence under Articles 226 and 227 of the Constitution by taking into account any subsequent event which might have happened. That apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority, in eye of law, it must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the writ petition in the High Court the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any elder son.

5. In the present case both the Courts below have concurrently found that need for personal necessity of the respondent/landlord is genuine and bonafide.

6. In view of my above discussions the findings cannot be held to be perverse in any manner.

7. Accordingly, I do not find any merit in the present petition and the same is dismissed.

October 01, 2007 **(Rajesh Bindal)**
Pka **Judge**